BUSINESS REPORT

MONTANA SENATE 61st LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Monday, March 30, 2009

Time: 9:00 am

Place: Capitol

Room: 303

BILLS and RESOLUTIONS HEARD:

HB 132

EXECUTIVE ACTION TAKEN: HB 102-Remove from the Table-motion failed, HB 534-Be Concurred in As Amended, HB 431-Removed from the Table, Tabled, HB 132-Withdrew Motion, Be Concurred In, HB 228-Be Concurred in As Amended

COMMENTS:

SEN. Gary L. Perry, Chairman

DATE: 3/30/09

NAME	<u>PRESENT</u>	ABSENT/ EXCUSED
SENATOR GARY PERRY, CHAIRMAN		
SENATOR JIM SHOCKLEY, VICE CHAIRMAN	60	1
SENATOR AUBYN CURTISS		
SENATOR JOHN ESP		
SENATOR GREG HINKLE		
SENATOR LARRY JENT		/
SENATOR CAROL JUNEAU		
SENATOR CLIFF LARSEN		
SENATOR JESSE LASLOVICH	_	
SENATOR DANIEL MCGEE		
SENATOR LYNDA MOSS		
SENATOR TERRY MURPHY		



SENATE STANDING COMMITTEE REPORT

March 30, 2009 Page 1 of 2

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 534** (third reading copy -- blue) be concurred in as amended.

Signed:

Sengtor Gary L. Perry, Chair

To be carried by Senator Jim Shockley

And, that such amendments read:

1. Page 1, line 29.

Following: "FELONY"

Insert: "or, in the case of a youth, an offense that would be a
 felony if committed by an adult"

2. Page 3, line 11 through page 4, line 3.
Strike: section 4 in its entirety

Insert: "NEW SECTION. Section 4. Exceptions to custodial recording requirements. A judge shall admit statements or evidence of statements that do not conform to [section 3] if, at hearing, the state proves by a preponderance of the evidence that:

- (1) the statements have been made voluntarily and are reliable; or
- (2) one or more of the following circumstances existed at the time of the custodial interrogation:
- (a) the questions put forth by law enforcement personnel and the person's responsive statements were part of the routine processing or booking of the person;

Committee Vote:

Yes 12, No 0

Fiscal Note Required ___

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- (b) before or during a custodial interrogation, the person unambiguously declared that the person would respond to the law enforcement officer's questions only if the person's statements were not electronically recorded;
- (c) the failure to electronically record an interrogation in its entirety was the result of unforeseeable equipment failure and obtaining replacement equipment was not practicable;
- (d) exigent circumstances prevented the making of an electronic recording of the custodial interrogation;
- (e) the person's statements were surreptitiously recorded by or under the direction of law enforcement personnel;
- (f) the person's statement was made during a custodial interrogation that was conducted in another state by peace officers of that state in compliance with the laws of that state; or

Renumber: subsequent sections

3. Page 4, line 5 through line 11.
Following: "INSTRUCTION."

Strike: "If" through "]." on line 11

Insert: "If the defendant objects to the introduction of evidence
 under [section 3] and the court finds by a preponderance of
 the evidence that the statements are admissible, the judge
 shall, upon motion of the defendant, provide the jury with a
 cautionary instruction."



SENATE STANDING COMMITTEE REPORT

March 30, 2009 Page 1 of 7

Mr. President:

We, your committee on Judiciary recommend that House Bill 228 (third reading copy -- blue) be concurred in as amended.

Signed:

Senator Gary L. Perry, Chair

To be carried by Senator Dan McGee

And, that such amendments read:

1. Title, line 8.

Following: "SECTIONS"

Strike: "45-8-315, 45-8-316,"

Insert: "45-3-103, 45-8-321, 45-8-328,"

2. Title, line 9.

Following: the first "MCA;"

Strike: "AND REPEALING SECTION 45-8-317, MCA"

Insert: "AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, line 10. Following: line 9

Insert: "WHEREAS, the Legislature declares that:

- (1) the right of Montanans to defend their lives and liberties, as provided in Article II, section 3, of the Montana Constitution, and their right to keep or bear arms in defense of their homes, persons, and property, as provided in Article II, section 12, of the Montana Constitution, are fundamental and may not be called into question;
- (2) the use of firearms for self-defense is recognized within the right reserved to the individual people of Montana in Article II, section 12, of the Montana Constitution;
- (3) self-defense is a natural right under section 1-2-104, MCA, and is included in sections 49-1-101 and 49-1-103, MCA;

Committee Vote:

Yes 8, No 4

Fiscal Note Required ___

ON

- (4) the lawful use of firearms for self-defense is not a crime or an offense against the people of the state;
- (5) in a criminal case in which self-defense is asserted, the burden of proof is as provided in [section 10];
- (6) in self-defense, the use of justifiable force discourages violent crime and prevents victimization; and
- (7) the purpose of [sections 1 through 3] is to clarify and secure the ability of the people to protect themselves."
- 4. Page 1, line 13 through line 25. Strike: section 1 in its entirety Renumber: subsequent sections
- 5. Page 1, line 29.
 Following: "prior to"

Strike: "acting in self-defense."

Insert: "using force. The provisions of this section apply to a
 person offering evidence of justifiable use of force under
 45-3-102, 45-3-103, or 45-3-104."

6. Page 2, line 1 through line 16.

Strike: section 3 in its entirety

Insert: "NEW SECTION. Section 2. Openly carrying weapon -- display -- exemption. (1) Any person who is not otherwise prohibited from doing so by federal or state law may openly carry a weapon and may communicate to another person the fact that the person has a weapon.

- (2) If a person reasonably believes that the person or another person is threatened with bodily harm, the person may warn or threaten the use of force, including deadly force, against the aggressor, including drawing or presenting a weapon.
- (3) This section does not limit the authority of the board of regents or other postsecondary institutions to regulate the carrying of weapons, as defined in 45-8-361(5)(b), on their campuses."

Renumber: subsequent sections

7. Page 2, line 18.

Following: "involving"
Strike: "self-defense"
Following: "claim"

Insert: "of justifiable use of force"

8. Page 2, line 19.

Following: "appears to have"

Strike: "been"

9. Page 2, line 20.

Strike: "been in self-defense"

Insert: "involved justifiable use of force"

10. Page 2, lines 20 through 21.
Following: "testimony" on line 20

Strike: remainder of line 20 through "support" on line 21

Insert: "concerning"

11. Page 2, line 21.

Following: "and"

Insert: "that might support"

Following: "alleged"
Strike: "self-defense"

Insert: "justifiable use of force"

12. Page 2, line 22.

"45-3-103. Use of force in defense of occupied structure.
(1) A person is justified in the use of force or threat to use force against another when and to the extent that he the person reasonably believes that such conduct the use of force is

necessary to prevent or terminate such the other's unlawful entry into or attack upon an occupied structure. However, he

(2) A person justified in the use of force pursuant to subsection (1) is justified in the use of force likely to cause death or serious bodily harm only if:

(1) (a) the entry is made or attempted in violent, riotous, or tumultuous manner and he the person reasonably believes that such the force is necessary to prevent an assault upon or offer of personal violence to him the person or another then in the occupied structure; or

(2) (b) he the person reasonably believes that such the force is necessary to prevent the commission of a forcible felony in the occupied structure."

13. Page 4, line 23 through page 5, line 10. **Strike:** sections 7 and 8 in their entirety

Renumber: subsequent sections

14. Page 5, line 12. Following: line 11

Insert: "Section 7. Section 45-8-321, MCA, is amended to read:

"45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the

applicant:

- (a) is ineligible under Montana or federal law to own, possess, or receive a firearm;
- (b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;
- (c) <u>subject to the provisions of subsection (6)</u>, has been convicted in any state or federal court of:
- $\underline{\text{(i)}}$ a crime punishable by more than 1 year of incarceration $\underline{\text{or}}$; or
- <u>(ii)</u> regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;
- (d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;
- (e) has a warrant of any state or the federal government out for the applicant's arrest;
- (f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;
- (g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or
- (h) was dishonorably discharged from the United States armed forces.
- (2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.
- (3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:
- (a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;
- (b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms

association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

- (c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;
- (d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or
- (e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.
- (4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).
- (5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.
- (6) A person, except a person referred to in subsection (1)(c)(ii), who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of a concealed weapons permit if otherwise eliqible.""
- Insert: "Section 8. Section 45-8-328, MCA, is amended to read:
- "45-8-328. Carrying concealed weapon in prohibited place
 -- penalty. (1) A person commits the offense of carrying a
 concealed weapon in a prohibited place if the person purposely or
 knowingly carries a concealed weapon in:
- (a) portions of a building used for state or local government offices and related areas in the building that have been restricted;
- (b) a bank, credit union, savings and loan institution, or similar institution during the institution's normal business hours. It is not an offense under this section to carry a concealed weapon while:
- (i) using an institution's drive-up window, automatic teller machine, or unstaffed night depository; or
- (ii) at or near a branch office of an institution in a mall, grocery store, or other place unless the person is inside the enclosure used for the institution's financial services or is

using the institution's financial services.

- (c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises:
 - (d) a health care facility as defined in 50-5-101.
- (2) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed \$500, or both.""

 Renumber: subsequent sections

15. Page 5, line 16 through line 17.

Following: "person." on line 16

Strike: remainder of line 16 through "45-3-106." on line 17

16. Page 5, line 20.

Following: line 19

Insert: "NEW SECTION. Section 10. Justifiable use of force --burden of proof. In a criminal trial, when the defendant has offered evidence of justifiable use of force, the state has the burden of proving beyond a reasonable doubt that the defendant's actions were not justified."

Renumber: subsequent sections

17. Page 5, line 21.

Strike: section 10 in its entirety

Renumber: subsequent sections

18. Page 5, line 23.

Strike: "4"
Insert: "3"

19. Page 5, line 25.

Strike: "4"

Insert: "3"

20. Page 5, line 30.

Strike: "1"

Insert: "24"

Strike: "4"

Insert: "1"

21. Page 6, line 1.

Strike: "1"

Insert: "24"

Strike: "4"

Insert: "1"

22. Page 6, line 4.

Following: line 3

Insert: "(4) [Section 10] is intended to be codified as an
 integral part of Title 46, chapter 16, part 1, and the
 provisions of Title 46, chapter 16, part 1, apply to
 [section 10]."

23. Page 6, line 5. Following: line 4

Insert: "NEW SECTION. Section 12. Effective date. [This act]
is effective on passage and approval."

- END -

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AUTHORIZED SENATE COMMITTEE PROXY

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AUTHORIZED SENATE COMMITTEE PROXY

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AUTHORIZED SENATE COMMITTEE PROXY

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MONTANA STATE SENATE Visitors Register

Judiciary Committee Bill No. <u>HB-132</u> PLEASE PRINT	Sponsor(s) Rep. R. Stoker PLEASE PRINT PLEASE PRINT				
Name and Address	Representing	Support	Oppose	Inf.	
Edward Aulera	DPHHS. MT SELH				
Lou Thompson	DPHHS-AMDO	γ			

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Edward Aulera	DPHHS. MT SELAG	50	V	
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.